

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 789 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE M.C.PATEL

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?-Yes.
2. To be referred to the Reporter or not?-Yes.
2. To be referred to the Reporter or not?-Yes.
2. To be referred to the Reporter or not?-Yes.
2. To be referred to the Reporter or not?-Yes.
2. To be referred to the Reporter or not?-Yes.
2. To be referred to the Reporter or not?-Yes.
2. To be referred to the Reporter or not?-Yes.
2. To be referred to the Reporter or not?-Yes.
3. Whether Their Lordships wish to see the fair copy of the judgement?-No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.
5. Whether it is to be circulated to the Civil Judge?-No.

PRAHLADJI MOHANJI THAKOR

Versus

STATE OF GUJARAT

Appearance:

MR SV PARMAR for Petitioner

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE M.C.PATEL

Date of decision: 02/02/99

ORAL JUDGEMENT: (Per C.K. Thakkar, Acting C.J.)

This petition is filed by the petitioner, challenging the constitutional validity and vires of Section 264 of the Gujarat ...

(hereinafter referred to as "The Act").

At the outset, it may be stated that one Sarojben S. Thakor filed Special Civil Application No.432 of 1999, which came up before us on 21st of January, 1999. In the said petition also validity of Section 264 of the Act was challenged on various grounds. After the matter was argued for some time, the learned counsel for the petitioner, did not press challenge to vires of Section 264 of the Act and we passed the following order :-

" The learned counsel for the petitioner does not press challenge to the vires of provisions of Section 264 of the Gujarat Panchayats Act, 1993. In view of the said statement, the office is directed to place the matter before the learned single Judge taking such matters tomorrow, i.e. 22nd January, 1999."

So far as the present petition is concerned, Mr.Parmar, learned counsel for the petitioner, submitted that though a similar contention was raised in Special Civil Application No.432 of 1999, the question can still be decided in the present petition inasmuch as the parties in Special Civil Application No.432 of 1999 and in the present petition, i.e. Special Civil Application No.789 of 1999, are different. Moreover, even on merits, contentions raised in the previous petition as well as in this petition are different. He submitted that in the previous petition, the validity of Section 264 was challenged on the ground that the provisions of Section 264 of the Act were not in consonanc...

constitutional scheme envisaged by Part IX of the Constitution (Articles 243 to 243-O of the Constitution). In the present petition, however, the petitioners have challenged the validity of the said Section on the ground that it confers blanket, uncanalised and arbitrary powers on the State Government. The provisions of Section 264 are, therefore, arbitrary, unreasonable and violative of Articles 14 and 19 of the Constitution. In the light of

the said submission, Mr.Parmar made a prayer that from the present petition, ground No.(v) may be permitted to be deleted. The said ground reads as under :-

"... (v) The power conferred on the government enables it to subvert the Constitutional scheme laid down in the Constitution of India for Taluka and district Panchayats. It can make the persons residing outside area under its authority as members of Panchayat. It can reduce representation of Scheduled Castes throwing to wind the reservation policy laid down under Article 264D, create imbalance in ratio of seats to population that has to be same throughout the Gujarat State. Such are the consequences of order Annexure D"

We had granted permission. We have also heard Mr.Parmar on merits.

The provisions of Section 264 read as under :-

"264. Consequences of alteration of limits of district or taluka.-(1) When, on account of the constitution of a new district or Taluka under the Land Revenue Code, or for any other reason, the limits of a district, or as the case may be, a Taluka are, during the term of office of the members of the district Panchayat or, as the case may be, the Taluka Panchayat, altered so as to -

(a) include any area therein, or

(b) exclude any area therefrom,

the State Government may, notwithstanding anything contained in this Act or any other law for the time being in force, by order published in the Official Gazette, provide for all or any of the following matters, namely:-

(i) in a case falling under

clause (a), the interim increase in the number of members of the district Panchayat or, as the case may be, the Taluka Panchayat, and

the appointment of such additional members from amongst the members of Panchayat who are elected from the area so included;

(ii) in a case falling under clause (b), the interim reduction in the number of members of the district Panchayat, or, as the case may be, the Taluka Panchayat and the termination of office of the elected members of the district Panchayat or, as the case may be, Taluka Panchayat who are elected as such members from the area so excluded;

(iii) the term for which additional members so appointed shall hold office and the manner of filling casual vacancies of such members;

(iv) allocation of any officer or servant of the Panchayat affected by the alteration of limits;

(v) the removal of any difficulty which may arise on account of any change referred to in clause (a) or clause (b).

(2) The district Panchayat or the Taluka Panchayat, if any, functioning immediately before the alteration of the limits shall, subject to the addition or exclusion of members under sub-section (1), continue to function until the expiry of its duration under this Act and on such expiry it shall be reconstituted in the manner provided in this Act.

(3) If in consequence of the alteration of the limits of any district or Taluka, the area excluded therefrom is included in any other district or Taluka, then -

- (a) such portion of the district or Taluka fund, and other property of the district or Taluka Panchayat of the district or Taluka from which the area is so excluded shall vest in, and be transferred to the district Panchayat, or as the case may be, the Taluka Panchayat of the district, or as the case may be, the Taluka in which such area is included, as the State Government may, by order in writing, direct;
- (b) the rights, assets and liabilities of the district or Taluka Panchayat of the district or Taluka from which the area is so excluded in respect of any contracts, agreements and other matters and things, arising in or relating to the area so excluded, shall vest in, and be transferred to, the district or Taluka Panchayat of the district or Taluka in which the area is included;
- (c) any notification, notice, tax, fee, cess, rule, bye-law, order, licence or permission issued, imposed, made or granted by the district or Taluka Panchayat in respect of the area so excluded shall be deemed to have been issued, imposed, made or granted by the district or Taluka Panchayat of the district or Taluka in which the area is so included and shall continue in force until it is superseded in accordance with law;
- (d) all proceedings relating to the area excluded from the district or Taluka and pending before the Panchayat on the date of such exclusion shall be transferred to and disposed of by the district or Taluka Panchayat of the district or Taluka in which the area is included."

Mr.Parmar submitted that sub-section (1) of Section 264 provides for inclusion or exclusion of limits of any area from Taluka or District Panchayat. According to

Mr.Parmar, certain consequences ensue from alteration of limits of District or Taluka. He contended that uncanalised powers have been conferred on the Government when limits of any area are altered. The powers are discretionary in nature, inasmuch as, if the Government intends to take actions, it is open to the Government to take those actions. But it is equally open to the Government not to take any action even though the situation envisaged by Section 264 has arisen.

In this connection, our attention was invited by Mr.Parmar to the phraseology used by the Legislature. Contending that the expression 'may' has been used by the Legislature, the counsel urged that it is left to the sweet will of the Government whether to exercise or not to exercise such power. Such a provision, according to Mr.Parmar, cannot be said to be legal and reasonable, but must be held to be arbitrary and violative of Article 14 of the Constitution. He submitted that no safeguards have been provided and selective power has been left to the whims and caprice of the Government. He also contended that the power, which has been conferred, has been very widely worded by using a non-obstante clause "Notwithstanding anything contained in this Act or any other law for the time being in force". It is, therefore, open to the Government, according to the learned counsel, to ignore not only the provisions of the Gujarat Panchayats Act, 1993, but all other Acts for the time being in force. Such power could not have been conferred by the Legislature upon the Government and conferment of such wide power is arbitrary and violative of Article 14. Moreover, conferment of such power is not in consonance with the scheme of the Act. For that, our attention was invited particularly to Chapters II and III of the Act, which provide for Establishment of Panchayats of Different Tiers and Election of Members of Panchayats, Election Disputes, etc. Such an overriding and blanket power would be violative of basic structure and fundamental principle underlying the Panchayat Act.

Grievance of Mr.Parmar was also against provisions of sub-section (2) of Section 264, which enacts that the District Panchayat or Taluka Panchayat functioning immediately before the alteration of the limits shall, subject to the addition or exclusion of members, continue to function until the expiry of the duration under the Act. He submitted that this is also inconsistent with the scheme of Chapters II and III of the Act.

Lastly, he submitted that sub-section (3) of

Section 264, which provides for consequences of exclusion and inclusion, is equally bad on the grounds and reasons for invalidity of sub-section (1) of Section 264. According to him, the provisions are vague and general in nature and they do not lay down any guideline for exercise of power by the Government.

Our attention was invited by Mr.Parmar to two decisions of the Hon'ble Supreme Court. In B. Viswanathiah and Company and others v. State of Karnataka and others, (1991) 3 SCC 358, constitutional validity of certain provisions of the Karnataka Silkworm Seed and Cocoon (Regulation of Production, Supply and Distribution) (Amendment) Act, 1979 was initially challenged on the ground that they were violative of Article 19(1)(g) of the Constitution. Thereafter, in another litigation, the validity of the said provisions was challenged contending that they were not within the legislative competence and, hence, unconstitutional and ultra vires. It was held that such a petition was maintainable, inasmuch as, the ground, which was advanced in a subsequent petition was different than the ground raised in previous proceedings. Mr.Parmar also drew our attention to a recent decision in State of Kerala and others v. Travancore Chemicals and Manufacturing Co. and another, (1998) 8 SCC 188. In that case, the Apex Court declared Section 59A of the Kerala General Sales Tax Act, 1963 as inserted by Act 43 of 1975 ultra vires and unconstitutional.

We are not dismissing the petition on the ground that it is not maintainable. We have heard the counsel on merits. It is, therefore, not necessary to deal with the decision in B. Viswanathiah.

We are, however, of the opinion that the provisions of Section 264 of the Act cannot be declared ultra vires Article 14 of the Constitution. Section 264 provides for consequences of alteration of limits of a Taluka or a District. It is the mandate of the Legislature that certain consequences would ensue on such alteration of limits. It, therefore, cannot be said that blanket, arbitrary or uncanalised powers have been conferred by the Legislature on the State Government.

So far as the decision in Travancore Chemicals and Manufacturing Co. is concerned, in that case, substantive powers have been conferred on the Government to determine the rate of tax and the decision of the Government was treated as final "notwithstanding any other provision" in the Act. It was virtually an

adjudicative power which had been conferred on the Government and, therefore, the said provision was held ultra vires and unconstitutional. In the instant case, after alteration of limits in District and Taluka, certain actions are required to be taken in accordance with the provisions of the Act and hence, the ratio laid down in the above decision would not apply.

It is quite possible, in a given case, a consequential action after alteration of limits of Districts and Talukas may not be in accordance with the provisions of the Act. Such action, in our opinion, however, may not be legal and valid, and it can always be challenged in an appropriate court of law. So far as the powers are concerned, it cannot be said that uncanalised powers have been conferred. We, therefore, do not see any ground to entertain the petition and dismiss it. The petition is dismissed.

(apj)